

**BellSouth Corporation**

Suite 900  
1133-21st Street, NW  
Washington, DC 20036-3351

glenn.reynolds@bellsouth.com

**Glenn T. Reynolds**

Vice President -  
Federal Regulatory

202 463 4112

Fax 202 463 4142

August 14, 2002

EX PARTE

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> St. SW  
Washington, D.C. 20554

Re: WC Docket 02-150

Dear Ms. Dortch:

In response to a request from Commission staff, BellSouth is providing the following information in the record of the proceeding identified above.

AT&T rehashes a number of unsubstantiated attacks on the demand utilized by BellSouth in calculating DUF rates in the states at issue in this proceeding. These same arguments—made with respect to the exact same data at issue here-- were specifically rejected by this Commission in the Georgia/Louisiana 271 Order. *See Georgia/Louisiana 271 Order* at para. 90. As in that proceeding, it must be understood that AT&T has never raised any of these issues with the respective state commissions despite numerous opportunities to do so. Of course, this is true of most of the pricing issues raised by AT&T in this proceeding. Here, however, AT&T adds the additional wrinkle of asking the Commission to conduct a *de novo* review of the state pricing dockets not because of any alleged mistake in the data used by BellSouth, but solely because use of different data might have led to different predictions about future growth. In particular, AT&T asks the Commission to make the determination that BellSouth should have used shorter time frames than those in the studies submitted by BellSouth and approved by the state commissions to predict future growth. Instead of the 13-month and 5-months periods used by BellSouth, AT&T Declarant Turner uses 4-months and 3-months, respectively. In addition to the fact that shorter time frames are inherently less reliable, Mr. Turner's arguments in support of his position are internally inconsistent. Specifically, at one point Mr. Turner argues that BellSouth's growth assumptions are *too small* because CLEC marketing activities in the region "have only recently begun," while at another point he argues that BellSouth's growth estimates are *too high* because it is "inconsistent with the patterns in the telecommunications industry in which various CLECs have gone bankrupt or dropped out of the local market sector in the past year." Finally, some of Mr. Turner's criticisms are based solely on a fundamental misunderstanding of the demand

used by BellSouth to calculate DUF rates—a misunderstanding fully rejected in BellSouth’s Reply.

The simple fact is that BellSouth’s estimates were based upon the best actual data available at the time the studies were conducted. Indeed, they are based on the exact same demand estimates that were used in the Georgia DUF rates approved by this Commission in the *Georgia Louisiana 271 Order*—a fact Mr. Turner doesn’t mention. Nor does Mr. Turner mention that the same criticisms he makes here were rejected by the Commission in that proceeding for a reason equally applicable in this proceeding-- because “AT&T’s challenges to the reasonableness of the DUF cost study were not made in the original cost proceeding.” *Georgia/Louisiana 271 Order* at para. 90.

While the Commission’s conclusion in *Georgia/Louisiana* should be determinative on these issues, a review of the substance of AT&T’s assertions underscores that it raises no evidence that BellSouth’s DUF cost studies contained clear TELRIC error. Mr. Turner first alludes to an alleged inconsistency in BellSouth’s cost study with respect to the beginning demand used to project future message counts. *See* Turner Decl. ¶¶40-42. Mr. Turner’s allegation is simply wrong. The explanation is understandable once one considers what the two study inputs compared by Mr. Turner are intended to reflect. The number of messages will be used to recover costs, and thus it is appropriate to exclude from this amount messages generated by CLECs that do not order DUFs. In other words, not all CLECs purchase DUF processing, yet all their messages still must go through the initial phase of the processing application. The billing systems are programmed to first accumulate all messages and then to determine which CLECs want to receive messages. As discussed in detail in Daonne Caldwell’s Reply Affidavit (and reaffirmed below), costs are subsequently determined using *all* DUF messages generated by the systems—that is, adding BellSouth DUF messages where appropriate—less the number of messages generated by CLECs that do not order DUFs.

As to the specific files referenced by Mr. Turner, the total number of ODUF monthly messages (134,853,631) in the ODUF.xls file, INPUT Worksheet, Cell H32, represents the total ODUF monthly messages received and processed. The 95,934,904 in ODUF.xls file, INPUT Worksheet, Cell G194, represents the ODUF and EODUF monthly messages that were processed and actually delivered to CLECs who purchase DUF. The key is that 95,934,904 of the 134,853,631 messages received and processed were actually delivered to the CLECs and for which BellSouth will be compensated. The difference between 95,934,904 and 134,853,631 (or 38,918,727) represents those messages that were dropped because those CLECs do not subscribe to the DUF service.

Mr. Turner’s second criticism questions BellSouth’s growth assumption with respect to monthly growth rates for DUF messages. Mr. Turner labels these estimates “stingy” —not wrong, just apparently less than he would like to see. *See* Turner Decl., ¶¶43-46. BellSouth’s estimate of incremental messages was based on a study of actual message growth during the 13-month period from January 2000 to February 2001 and was the best information available at the time the studies were conducted. Mr. Turner, by comparison, opts to use a 4-month average from January 2001 to May 2001 without providing any explanation for the months selected or, more importantly, why the 4-month estimate-- which of course was not argued to any state commission-- can be considered more accurate than BellSouth’s 13-month average. To the contrary, the use of a longer time period provides a much better indication of the average incremental monthly

messages by flattening out any anomalies in particular months and accounting for seasonality. Indeed, a one-month anomaly—such as a holiday or CLEC introductory offer as it enters a new market—could completely skew a 4-month study, but would be evened out over the longer period of BellSouth’s study. AT&T provides absolutely nothing to support its argument that the growth rate could be sustainable. In fact, in order to support his next argument, Turner emphasizes that CLEC growth may actually decline over the longer term as demonstrated by the rash of recent CLEC bankruptcies. This recognition strongly supports the use of longer time-frames upon which to evaluate growth rates. More importantly, while Mr. Turner is free to argue that a 4-month study is acceptable, even if the Commission were to conclude that his approach would have been another reasonable way to proceed, he has done nothing to show that the state commissions’ reliance on the longer study (instead of unsubmitted contrary analysis from AT&T) constituted a patent TELRIC error. *See Verizon Application for 271 Authorization in Vermont*, FCC 02-118, at para. 20 (rel. April 17, 2002). It plainly does not.

In any event, Mr. Turner’s criticism of BellSouth’s methodology is based on a false assumption addressed in detail in the Reply Affidavit of Daonne Caldwell. Mr. Turner specifically states that his argument that BellSouth’s growth estimates are understated “relates to the earlier discussion in the declaration regarding BellSouth failure to utilize ‘total demand’ in developing the cost for DUF.” Turner Decl. at para. 46. As explained in our Reply, this underlying assumption is just plain wrong—BellSouth’s cost studies used both CLEC and BellSouth DUF demand, where appropriate, to calculate costs. *See Caldwell Reply Aff* at paras. 43-45. Thus, Mr. Turner’s allegations concerning DUF growth rates suffers by his own admission from the same failure to understand how BellSouth determined its DUF costs.

As noted previously, Turner’s third criticism of BellSouth’s DUF calculation is an about-face from his previous assertion. Turner Decl at paras. 47-48. While AT&T is certainly *legally* entitled to make inconsistent arguments in the alternative, the Commission should look at such attempts with an appropriate level of skepticism. BellSouth used *actual* data from September 2000 through February 2001 to project the incremental monthly increase in CLEC Operating Company Numbers (OCNs). Mr. Turner instead uses a three-month period between January 2001 and April 2001 to evaluate this growth. Mr. Turner does not explain why his 3 month analysis is more appropriate than the 5 month average used by BellSouth; nor why he chose to highlight *ODUF* OCN growth when his previously discussed 4-month growth estimate was highlighting *ADUF* message growth. As with the message forecast, the longer period of time used by BellSouth provides a more reliable foundation for this estimate.

Mr. Turner also implies that there should be a direct relationship between the number of messages and the number of CLECs/OCNs stating that BellSouth’s “OCN growth estimate is incorrect going into the future because it is inconsistent with BellSouth’s assumption that message growth will be slowing significantly.” (Turner Decl., ¶47) That analysis is incorrect. First, the alleged one-to-one correspondence is not a foregone conclusion. CLECs can and do establish multiple OCNs without an increase in message counts merely by segmenting existing markets. Furthermore, not all CLECs generate the same amount of message traffic. Finally, the CLEC/OCN input was the best available at the time the study was conducted, is consistent with the time frame of the study, and does not violate any basic TELRIC principles--which is the only question

relevant here. That AT&T was able to identify an isolated three-month period *after* BellSouth did its cost studies to support its position does not undermine the reasonableness of BellSouth's methodology.

As it did with respect to the Georgia/Louisiana proceeding, AT&T chose not to raise any of these arguments before the state commissions—whether solely as a strategic decision to delay BellSouth's entry into long distance or because they knew these arguments would not be persuasive given the states' thorough familiarity with these issues in the course of the various cost proceedings. Instead, AT&T has presented the Commission's Staff with brief snapshots of data and proceeds to argue that its data is somehow "better." Not only is AT&T wrong in this assertion, but its argument ignores the standard set forth by this Commission in prior 271 orders. The question is not whether there might have been other ways to proceed, but rather whether the evidence submitted by BellSouth and relied on by all these state commissions was inconsistent with basic TELRIC principles. *See Georgia/Louisiana 271 Order* para. 24 ("It is important to recognize . . . that state commissions may reach different reasonable decisions on matters in dispute while correctly applying TELRIC principles."); *New Jersey Order* para. 17 ("In applying the Commission's TELRIC pricing principles in this application, we note that different states may reach different results that are each within the range of what a reasonable application of TELRIC would produce.") As to that question, AT&T has no plausible argument. *See Vermont Order, supra*, para. 20 and note 69 (requiring "clear error" or "patent TELRIC error" where issue has not been raised with the state commissions). Simply stated, AT&T does nothing to demonstrate that the methodology used by BellSouth and approved by each of the state commissions is outside a reasonable TELRIC range—let alone demonstrate that the methodology constituted a "patent TELRIC error." The Commission should rely on its conclusion in the *Georgia/Louisiana 271 Order* and once again reject AT&T's belated attacks.

In accordance with Commission rules, I am filing copies of this notice and attachment and request that they be included in the record of the proceeding identified above.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn T. Reynolds", with a stylized, cursive script.

Glenn T. Reynolds

cc: Tamara Preiss  
Josh Swift  
Monica Desai  
Susan Pie  
James Davis-Smith (Department of Justice)